


FROM	Name & Title	Joan M. Pratt, CPA, Comptroller Chairman, Space Utilization Committee	CITY OF BALTIMORE MEMO	
	Agency Name & Address	Department of Real Estate Room 304, City Hall		
	Subject	Lease Agreement – Liberty Reservoir, Carroll County, MD The County Commissioners of Carroll County, Lessee		

**TO: Honorable President and Members
of the Board of Estimates**

Date: February 16, 2005

Dear President and Members:

ACTION REQUESTED OF THE BOARD OF ESTIMATES:

The Board is requested to approve and authorize execution of a Lease Agreement by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, Lessor and the **COUNTY COMMISSIONERS OF CARROLL COUNTY**, Lessee, for the use of land located within the Liberty Reservoir Watershed, Carroll County Maryland.

AMOUNT OF MONEY AND SOURCE OF FUNDS:

One Dollar

BACKGROUND/EXPLANATION:

The Carroll County Commissioners currently lease land from the City of Baltimore for the use of its water treatment facility located within the Liberty Reservoir, Eldersburg, Maryland. This 30 year old water treatment plant is in need of an upgrade and expansion which currently serves water to the Freedom Fifth Election District of Carroll County. This expansion will ease and accommodate water use consumption in South Carroll, the County's most populous and fastest growing area.

The expanded Leased Premises will consist of the currently occupied 2.01 acres and an additional 1.62 acres, for a total Leased area of approximately 3.63 acres. This Lease commences upon Board of Estimates approval and continues for a period of Fifteen (15) years with seven (7), ten (10) year renewal options. Lessee is responsible for all costs of construction, operation and maintenance as well as the overall upkeep of the Leased area.

The Space Utilization Committee approved this Lease Agreement at its meeting on February 8, 2005. The Law Department approved this Lease Agreement as to form and legal sufficiency on January 21, 2005.

Respectfully submitted,

Joan M. Pratt, CPA, Comptroller
Chairman, Space Utilization Committee

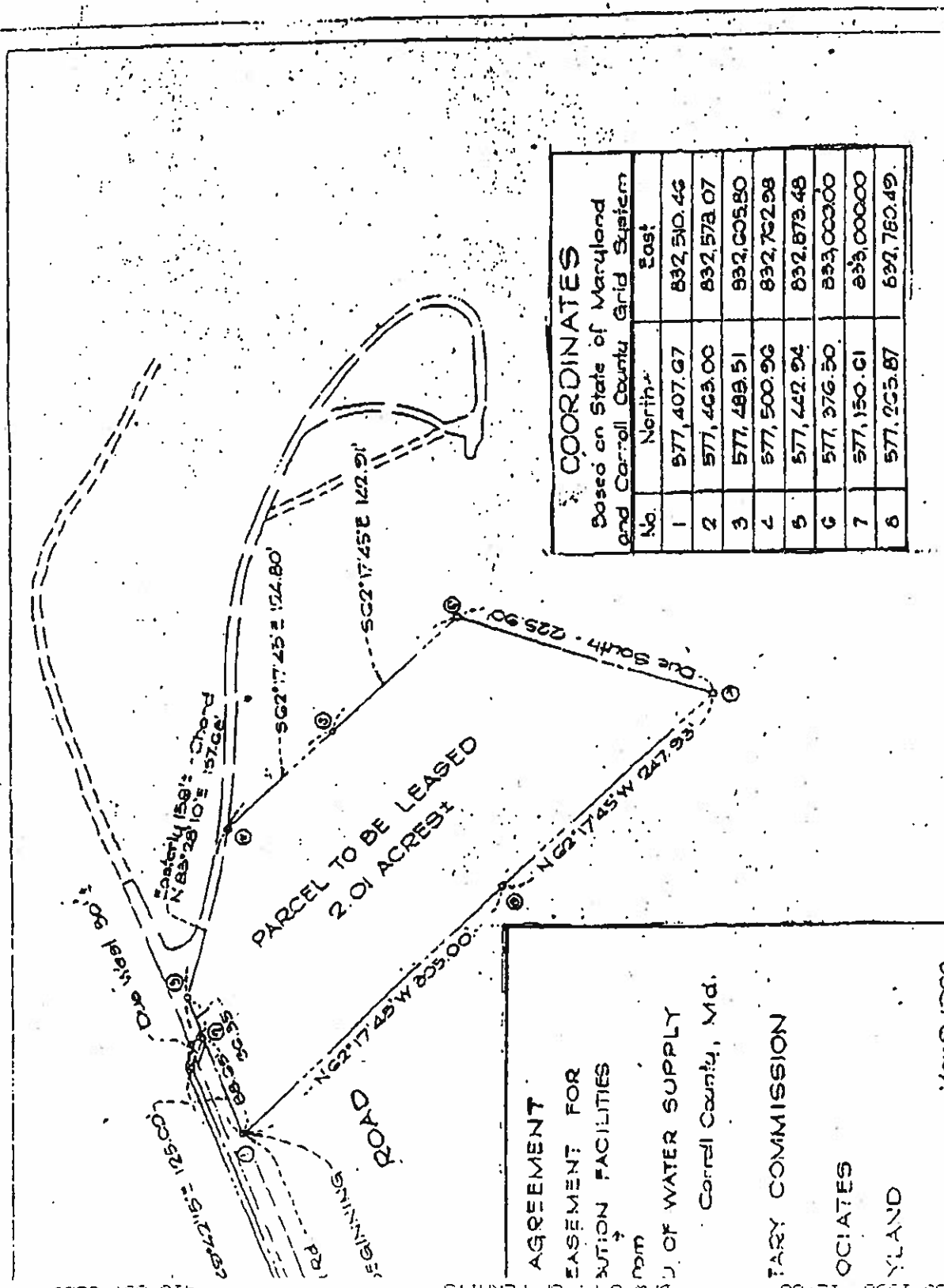
APPROVED BY THE BOARD OF ESTIMATES

FEB 16 2005

CLERK

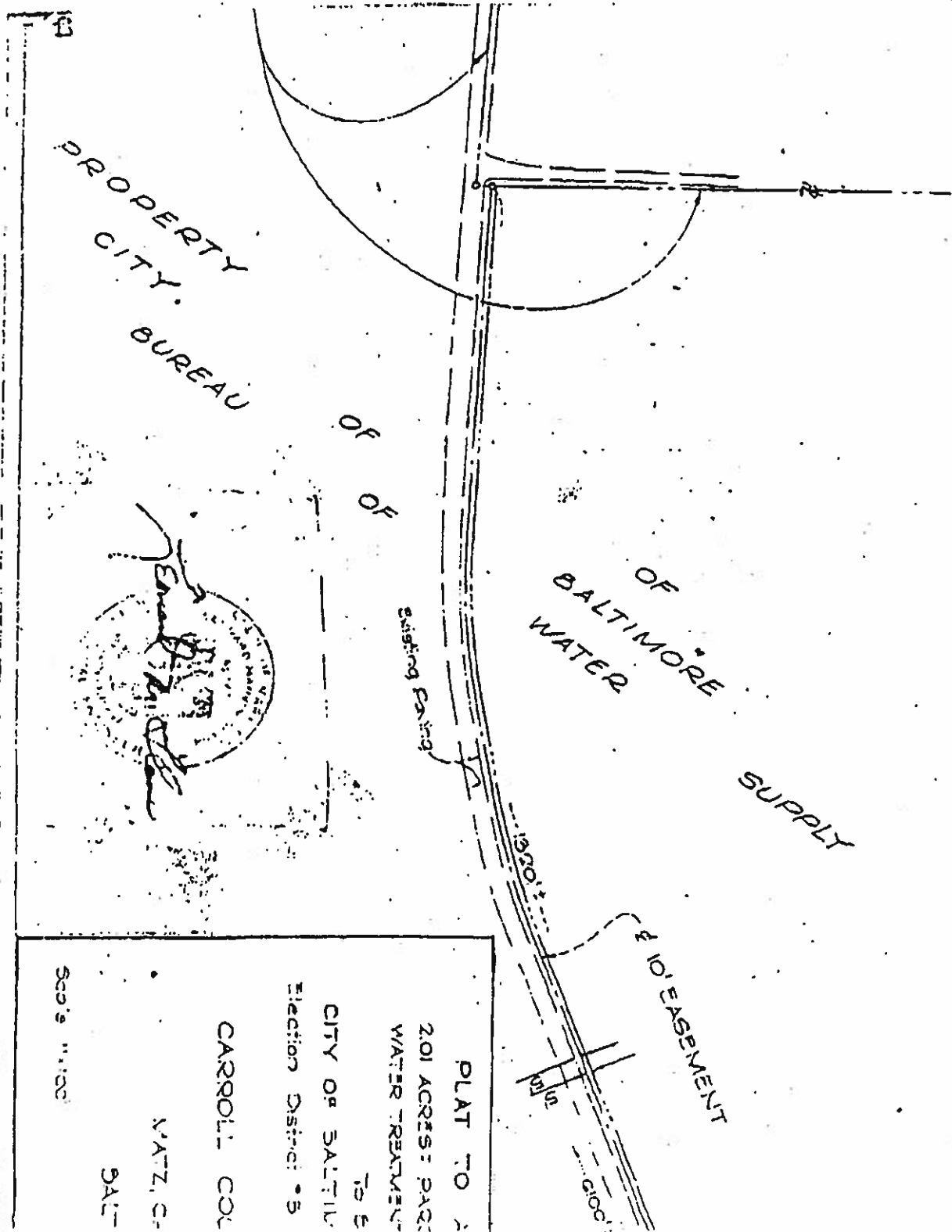
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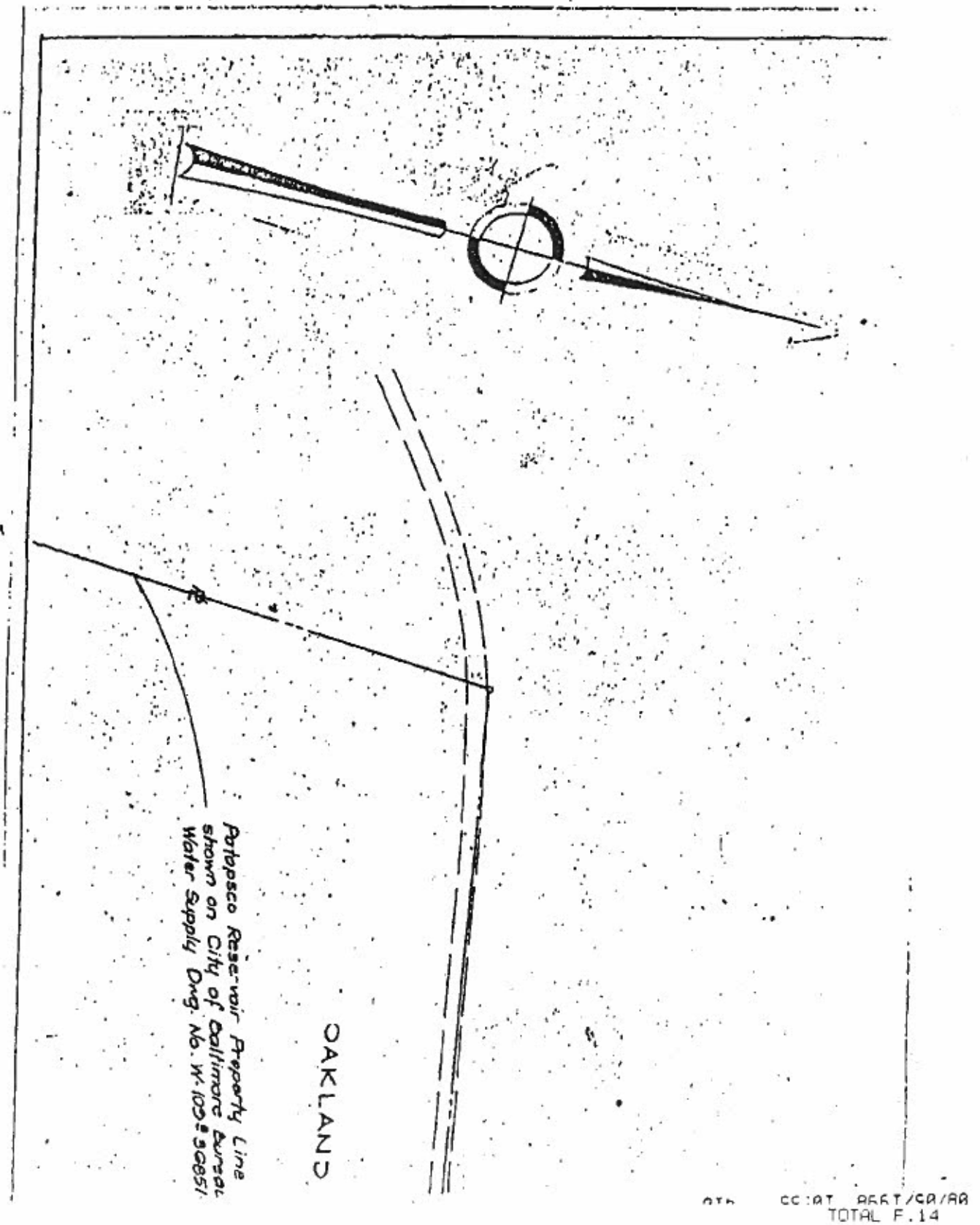
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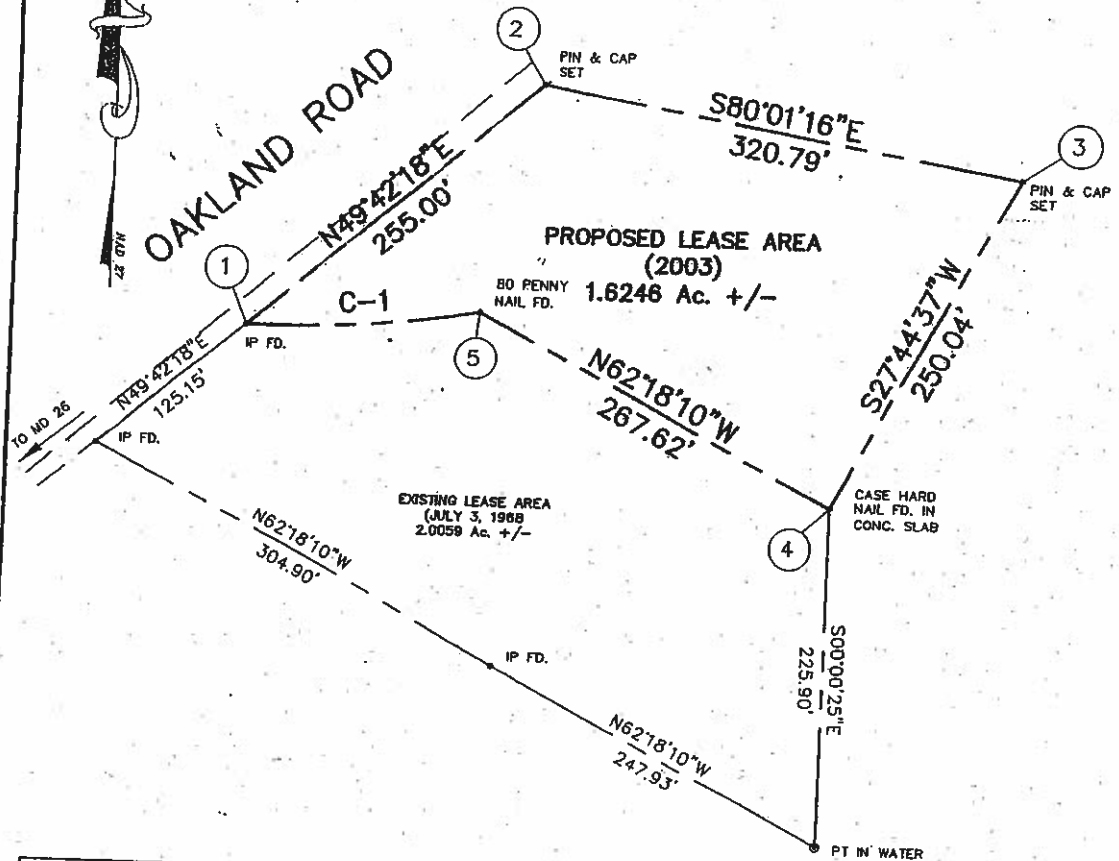
COORDINATES		
Based on State of Maryland and Carroll County Grid System		
No.	North	East
1	577,407.07	832,510.46
2	577,463.00	832,573.07
3	577,483.51	832,605.80
4	577,500.96	832,732.98
5	577,442.94	832,873.48
6	577,376.30	833,003.00
7	577,150.01	833,000.00
8	577,253.87	832,780.49

AGREEMENT
 EASEMENT FOR
 EXTENSION FACILITIES
 OF WATER SUPPLY
 Carroll County, Md.
 JURY COMMISSION
 COPIES
 YLAND
 May 9, 1998





COORDINATE TABLE		
NO.	NORTHING	EASTING
1	577488.5100	832605.8000
2	577653.4245	832800.2947
3	577597.8372	833116.2318
4	577376.5404	832999.8329
5	577500.9279	832762.8824



CURVE TABLE						
No.	DELTA	RADIUS	TANGENT	LENGTH	CHORD	CH. BEARING
C-1	12°03'36"	750.00'	79.22'	157.86'	157.57'	S 85°28'48"W

TITLE:
MAYOR AND CITY
COUNCIL OF BALTIMORE



RICHARD S. KREBS
REG. NO. 10873

COUNTY COMMISSIONERS OF CARROLL COUNTY
PLAN TO ACCOMPANY LEASE AGREEMENT

DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING

Drawn By KLM
Check By RSK
Book No. _____
Page No. _____
Sheet No. _____
Surveyed _____

**ADDITIONAL LEASE AREA
FOR FREEDOM WATER
TREATMENT PLANT**

This plat is compiled from deeds and surveys; the courses and distances shown on properties adjoining the proposed right of way are those contained in the deed referred to by Liber and Folio Number and do not necessarily refer to the meridian shown hereon nor do they imply a current survey of said properties unless so noted.

APPROVED BY: Richard S. Krebs
COUNTY SURVEYOR
Date June 9, 2003
LEGEND
Those of Carroll County Right-of-Way Standards
SCALE 1" = 100'
Date 6/9/03
Plat No. S-581

THIS LEASE AND AGREEMENT, made this _____ day of FEB 16 2005, 2005, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, hereinafter called the "CITY", and **THE COUNTY COMMISSIONERS OF CARROLL COUNTY**, hereinafter called "COUNTY", a public body politic and corporate of the State of Maryland.

WHEREAS, this Lease and Agreement is hereby intended to supersede and terminate the previous Lease and Agreement between the parties dated July 3, 1968, and

WHEREAS, the City is the owner of a tract or tracts of land in Baltimore and Carroll Counties, within the bounds of which is situated the Liberty Reservoir, and

WHEREAS, the County desires to obtain a continuing supply of raw water from the Liberty Reservoir and to expand the Freedom Water Treatment Plant in order to serve potable water to the Freedom Fifth Election District of Carroll County located adjacent to said Liberty Reservoir, and

WHEREAS, the City through its Department of Public Works, has agreed to the furnishing of a raw water supply from said Liberty Reservoir to the County including the right to enter the 10 foot area described below (herein called "right of entry area") for the construction of structures, pipe lines and appurtenances incident thereto through City property hereinafter mentioned, which is not now needed exclusively for municipal purposes.

NOW, THEREFORE, THIS LEASE AND AGREEMENT WITNESSETH, that in consideration of the sum of one dollar (\$1.00) and the covenants and agreements hereinafter contained to be performed by the parties hereto, and the faithful performance by the County of its duties and obligations hereunder, the City does hereby lease unto the County certain portions of the City's land area, that being a part of the Liberty Reservoir, the precise location and dimensions as shown on Exhibit A, and further described as approximately 2.01 acres more or less and the use of the 10' Right of Entry area, for Water Treatment and Distribution Facilities as shown on the plat prepared by Matz, Childs and Associates Engineers dated May 9, 1968, attached hereto as Exhibit "A" and made a part hereof and the metes and bounds thereof more particularly described as follows:

BEGINNING for the same at a ½ inch pipe set at the southeast edge of the roadway of Oakland Road, as now paved, at the distance of 6100 feet, more or less, as measured along said Oakland Road from its intersection with Mineral Hill road, and running thence, binding on said roadway, (1) N 49° 42' 15" E – 125.00

feet to a ½ inch pipe set at the south edge of a concrete roadway there laid out, thence binding on the south edge of said last mentioned roadway and following the curve thereof, (2) easterly 158 feet, more or less, to a ½ inch pipe set, said arc being subtended by a chord bearing N 85° 28' 10" E – 157.68 feet, thence leaving said roadway, (3) S 62° 17' 45" E – 124.80 feet to a ½ inch pipe set, thence continuing the same course, (4) S 62° 17' 45" E – 142.91 feet, thence (5) Due South 225.90 feet, thence (6) N 62° 17' 45" W – 247.93 feet to a ½ inch pipe set, and thence continuing the same course, (7) N 62° 17' 45" W – 305.00 feet to the place of beginning. Containing 2.01 acres of land, more or less.

Together with the use of the Right of Entry area, ten feet wide, the center line of which is described as follows:

BEGINNING for the same at a point on the southeast edge of the roadway of Oakland Road, as now paved, and in the first line of the 2.01 acre parcel herein described, and at the distance of 88.65 feet, as measured along said first line from the ½ inch pipe set at the beginning thereof, and running thence across said roadway and continuing the same course, due west 30 feet, more or less, thence southwesterly, by a line parallel with said Oakland Road and 5.00 feet northwest of the northwest edge of the roadway thereof, 1320 feet, more or less, to the intersection of said line with the west outline of the whole tract.

In addition, the City does Lease unto County an additional 1.6246 acres of City land adjacent to the Liberty Reservoir as delineated in the "Description of Proposed Additional Lease Area for Freedom Water Treatment Plant Expansion at Liberty Reservoir" and accompanying Plat, both dated June 9, 2003, and prepared by Richard S. Krebs, County Surveyor, and affixed hereto as Exhibit "B" and made a part hereof.

All of the above referred to areas being leased shall collectively be called "Leased Premises" or "Demised Premises."

As part of the consideration for the granting of this Lease it is covenanted and agreed by and between the parties, their successors or assigns, that the City during the term hereof and any renewals thereof shall, with or without actual connection thereto, be relieved from the payment of a front-foot assessment and/or any other charges for the entire length or extension thereof of water or sewer mains installed in roads on which City property abuts. The City, however, shall assume the costs for connections actually made and water consumed by it on City owned property or properties serviced by said mains.

The term of this Lease shall be FIFTEEN (15) years commencing on the FIRST DAY of BALTIMORE CITY BOARD OF ESTIMATES APPROVAL, and continuing thereafter until the _____ day of _____, 2020, at and for an annual rent of one dollar (\$1.00) if demanded. At the expiration hereof, the County shall have the right to seven, ten-year renewals subject to the same terms and provisions herein set forth reserving, however, to the City the right to adjust the annual rent at that time and provided further that the County give the City notice in writing ninety (90) days prior to said expiration. In the event the County should fail to exercise this renewal right, then all of its rights under this Lease shall automatically cease and terminate at the expiration of the original term without notice from the City.

IT IS FURTHER AGREED AND COVENANTED by and between the parties hereto:

Item 1. County, subject to the provisions of this Agreement, shall have the right to construct and maintain and expand a water intake structure, water filtration plant, pumping station, pipelines and necessary appurtenant works in, on, over and through the demised premises and is hereby permitted to extend and float an intake main into the adjacent lake.

Item 2. City, subject to the provisions of Item 7 hereof, shall make available to the County from the Liberty Reservoir an annual average daily flow of raw water of 4.2 million gallons (4.2 mg) or a maximum flow of 180 million gallons (180 mg) over any thirty (30) day period.

Item 3. City, acting through its Director of Public Works, shall approve all construction plans and specifications of the County appertaining to construction and use of the leased premises prior to the beginning of any construction of facilities within the Liberty Reservoir and areas adjacent thereto, and in its sole discretion may refuse to approve anything less than the final plan for that portion of the entire project relative to the leased premises.

Item 4. County shall pay all costs of construction, operation, and maintenance of all facilities required for the purpose contemplated herein constructed in, on, over and through the demised premises, including the seeding and maintenance of the grass cover, trees and shrubs of the leased premises in a manner satisfactory to the Director of Public Works, and in the event of a termination of this Lease and Agreement under its terms, by mutual consent or otherwise, any or all facilities constructed or installed hereunder shall, at the option of the City, be either removed by the County and all surfaces and areas disturbed thereby shall be restored to a

condition comparable to their original condition at its own cost and expenses or become the property of the City without cost or compensation payable to the County.

Item 5. County shall supply and install at its own costs and expense a meter, satisfactory to the City, which will be used as a basis for measuring raw water used by the County from the Liberty Reservoir. Said meter shall be serviced not less than semi-annually by the City or by a contractor approved by the City and such charges for meter services and repairs and/or replacements shall be billed by the City and paid by the County.

Item 6. County shall pay the City quarterly for water used in accordance with a schedule of rates to be determined and established by the City's Board of Estimates.

(a) The schedule of rates referred to above may be adjusted by the City's Board of Estimates from time to time as may be necessary to cover increased labor, material, and other operating costs to which the City may be subjected to in replacing from Liberty Reservoir or other sources water used by the County under the terms hereof.

Item 7. In the event meter water readings indicate that the average annual daily water use by the County will exceed 4.2 mgd or the maximum 30-day usage exceeds 180 mg, the County shall immediately take such steps as may be necessary to limit the water used in the Freedom Election District No. 5 of Carroll County in conformity to Item 2 of this Agreement.

Item 8. The County shall not use, or permit the use of, the demised premises or any portion thereof for any purpose other than that contemplated under this Agreement (i.e. the exclusive use of a water treatment plant) or that which is reasonably necessary for the use contemplated under this Agreement. Subject to the terms of this Lease and Agreement, County shall not use the demised premises in a manner that will interfere with, damage or destroy the City's use of Liberty Reservoir, and the lands, roads and utilities appurtenant thereto, as a source of water supply for Baltimore City. Outside storage of any type of equipment and/or material for any reason is strictly prohibited on the demised premises.

In addition, except in accordance with all federal, state and local laws, and only when required in connection with the use contemplated hereunder, the County shall not at any time store or use on the demised premises, (A) any "hazardous waste" as defined by the Resource, Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq., as amended from time to time, and regulations promulgated hereunder; (B) any "hazardous substance" as defined and regulated by the Comprehensive Environmental Response, Compensation and Liability Act

of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended from time to time, and regulations promulgated hereunder; (C) any "oil" as defined and regulated by the Maryland Environment Article Code Ann., Sec. 4-401, as amended from time to time; (D) any "controlled hazardous substance" as defined and regulated by the Maryland Environment Article Code Ann., Title 7, subtitle 2, as amended from time to time and regulations promulgated hereunder; and (E) any substance the presence of which on the demised premises is prohibited by any other federal, state, or local law, now existing or hereinafter enacted applicable to the demised premises (all items referred to in subparagraph (A) through (E) hereinafter referred to as "Hazardous Substances"). In no event shall the County dispose of, treat or manufacture any Hazardous Substances on, under or about the demised premises.

The County, at its own risk and expense, shall install and maintain its own storage facilities for any Hazardous Substances permitted under Item 8 in strict accordance with applicable federal, state, and municipal regulations, particularly the Hazard and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6991 et seq., and any and all regulations adopted pursuant to or in contemplation of those laws, whether or not adopted at the time of execution of this Lease and Agreement, with respect to any Hazardous Substance which the County stores or uses on the demised premises in accordance with the provisions of Item 8.

Item 9. County agrees to implement water conservation and drought restriction measures at least as stringent as those implemented by the City.

Item 10. If, during the term of this Lease and Agreement or any renewal thereof, (a) County shall make or suffer default in respect of any of the terms, conditions, agreements, or covenants of this Lease and Agreement, or (b) County shall abandon or fail to use the demised premises for the purposes herein contemplated for a period of One (1) year, the City may give to the County written notice of any such default and if at the expiration of Thirty (30) days after such notice the default upon which said notice was based shall continue to exist, or in the case of default which cannot with all due diligence be cured within a period of Sixty (60) days, if the County fails to proceed promptly and with all due diligence after such notice to cure same and thereafter to prosecute the curing of such default with all due diligence (it being intended in connection with a default not susceptible of being cured with all due diligence within Sixty (60) days that the time of the County within which to cure same shall be extended for such a period as may be necessary to complete the same with all due diligence), the City may give to the

County a notice of intention to end the term of this Lease and Agreement at the expiration of Ninety (90) days from the date of such second notice, and at the expiration of said Ninety (90) days, the term of this Lease and Agreement and all right, title and interest of the County hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of this Lease and Agreement and the City may re-enter and take possession of the demised premises.

Item 11. The County and their successors or assigns shall and do hereby:

(1) Waive, as to the City, its successors or assigns any and all damages to any of its property growing out of or in any way connected with this Lease.

(2) Indemnify, reimburse, defend and hold harmless City, its elected/appointed officials, employees, agents and representatives to the fullest extent allowed by law from and against any and all losses, costs, liabilities, which include, but are not limited to, any and all environmental liabilities, demands, obligations, claims, suits, actions, damages and expenses brought against the City, its elected/appointed officials, employees, agents and representatives, or incurred by any of them, by reason of injury to persons, including death, and damage to property arising out of or resulting from any direct, or indirect, willful, or negligent acts or omissions of the County arising from or in any way related to the County's violation of this Lease and Agreement. The term "environmental liability," as used herein, includes any claim, demand, penalty, obligation or other damage alleged by any person, including any private entity or governmental entity, relating to environmental pollution or contamination and resulting directly or indirectly from the County's activities on the demised premises.

Item 12. If any dispute or disagreement shall arise during the period covered by this Lease and Agreement or any renewal thereof in connection with either any interpretation of this Lease and Agreement or the performance or nonperformance thereof, and if such dispute or disagreement cannot be resolved by the City acting through its Director of Public Works and his or her counterpart in Carroll County Government, then and in such event, either party may demand that such dispute be submitted to arbitration by written notice to the opposite party; the party giving such notice shall designate an arbitrator in such notice and within fifteen (15) days from the receipt of such notice, the other party shall designate an arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within ten (10) days thereafter, the third arbitrator shall be designated by the then Chief Judge of the United States District Court for the District of

Maryland. If either party shall fail to designate an arbitrator within the time aforesaid, then such other party may request the then Chief Judge of the United States District Court for the District of Maryland to designate an arbitrator for the party failing to designate, and the arbitrator so designated by the Chief Judge of the United States District Court for the District of Maryland shall act in the same manner as if he had been designated by the party so failing to do so.

The decision of any two of the said three arbitrators shall be final and conclusive and binding on the parties to this Lease and Agreement. The final decision of the arbitrators shall be rendered within thirty (30) days from the date of the referral to arbitration.

The City and County shall share equally the expenses of arbitration, provided, however, that in the event the arbitrators find that either party has defaulted in performing an obligation imposed upon it under the terms of the Agreement, the arbitrators shall have the right to assess costs against the party found to be in default.

If, at any time, any one of the three arbitrators shall refuse to further serve as such or shall be unable to further act as such, then the Chief Judge of the United States District Court for the District of Maryland, shall, within one week after having been notified of such situation, appoint a substitute or successor in place of the said arbitrator, and the said new appointee shall have the same power as if he had been appointed originally by the parties hereto.

The final decision of the arbitrators shall be made within and not later than thirty (30) days after their appointment, unless for a good cause show they cannot render their decision within the said thirty (30) days.

The County Commissioners of Carroll County, as is evidenced by their signatures and corporate seal affixed hereto, hereby agree to be bound by the terms, covenants and conditions of this Lease and Agreement.

THIS SPACE INTENTIONALLY BLANK


IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on this _____ day of _____, 2005.

Attest:

MAYOR AND CITY COUNCIL OF
BALTIMORE


CUSTODIAN OF CITY SEAL

Alternate


By: JOAN M. PRATT, CPA
COMPTROLLER

APPROVED BY THE BALTIMORE CITY DEPARTMENT OF PUBLIC WORKS
THIS 24th DAY OF JAN, 2005


GEORGE L. WINFIELD, DIRECTOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
THIS 26th DAY OF January, 2005


EUGENE B. CECHERINE
ASSISTANT SOLICITOR

APPROVED BY THE BOARD OF ESTIMATES
THIS DAY OF FEB 16 2005, 2005


CLERK

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 16th day of February, 2005, before me, the subscriber, a Notary Public in and for the State and City aforesaid, personally appeared JOAN M. PRATT, who acknowledged herself to be the COMPTROLLER of THE CITY OF BALTIMORE, MARYLAND, a body politic of the State of Maryland, and that she, as COMPTROLLER, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the body politic by herself as COMPTROLLER,

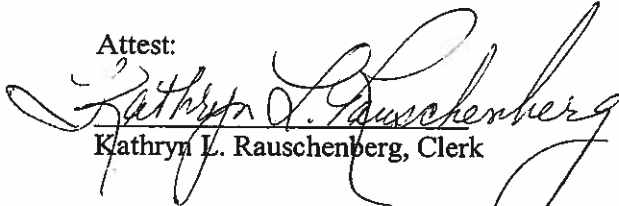
Witness my hand and Notarial Seal.

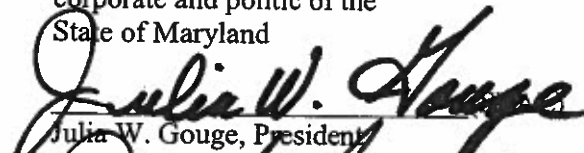

Notary Public

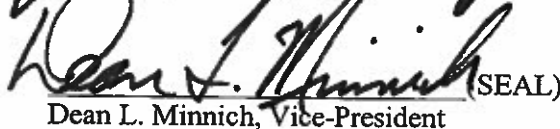
My Commission expires 9/01/06

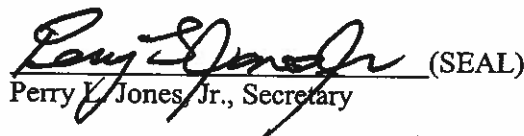
THE COUNTY COMMISSIONERS OF
CARROLL COUNTY, MARYLAND, a body
corporate and politic of the
State of Maryland

Attest:


Kathryn L. Rauschenberg, Clerk


Julia W. Gouge, President

 (SEAL)
Dean L. Minnich, Vice-President

 (SEAL)
Perry L. Jones, Jr., Secretary

APPROVED as to form and legal sufficiency:

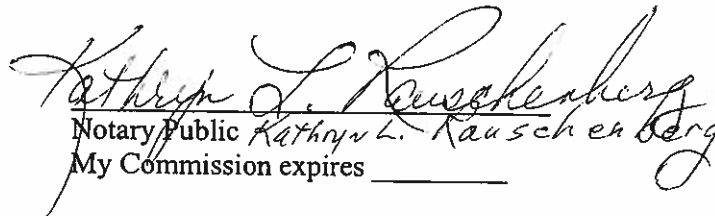


Department of the County Attorney

STATE OF MARYLAND, COUNTY OF CARROLL, to wit:

I HEREBY CERTIFY that on this 20 day of January, 2005, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared **JULIA W. GOUGE, DEAN L. MINNICH and PERRY L. JONES, JR.**, who acknowledged themselves to be the President, Vice-President, and Secretary, respectively, of **THE COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland, and that they, as such President, Vice-President, and Secretary, respectively, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the body corporate and politic by themselves as President, Vice-President, and Secretary, respectively.

Witness my hand and Notarial Seal.


Notary Public Kathryn L. Rauschenberg
My Commission expires _____

MY COMMISSION EXPIRES JANUARY 2, 2007